

**AN ORDINANCE TO AUTHORIZE AN ACCESS CHANNEL SERVICE AND
SUPPORT AGREEMENT WITH TELVUE CORPORATION.**

#3828

Sponsor:

Council
Member
Dorsey Walker
Cabrera

WHEREAS, pursuant to Section 2-308 and Section 8-200 of the Charter, the City of Wilmington is authorized to enter into contracts for the supply of property or the rendering of services for more than a period of one year if approved by City Council by ordinance; and

WHEREAS, the City desires to hire a contractor to organize, update, and maintain the content of WITN Channel 22, especially in regard to its message board, community announcements, public safety announcements, City government services and programming aired on WITN; and

WHEREAS, the City has negotiated an Access Channel Service and Support Agreement (the "Agreement") for such services with TelVue Corporation ("TelVue"); and

WHEREAS, the term of the Agreement is for a period of two (2) years beginning on July 1, 2013 and ending on June 30, 2015; and

WHEREAS, the cost to the City for TelVue's services (including system and support services) shall be Three Thousand Dollars (\$3,000) per year, which shall be paid in monthly installments of Two Hundred Fifty Dollars (\$250); and

WHEREAS, it is the recommendation of City Council's Office of Cable TV and Communications that the City enter into the Agreement with TelVue as described above, a copy of which, in substantial form, is attached hereto and incorporated by reference as Exhibit "A".

THE COUNCIL OF THE CITY OF WILMINGTON HEREBY ORDAINS:

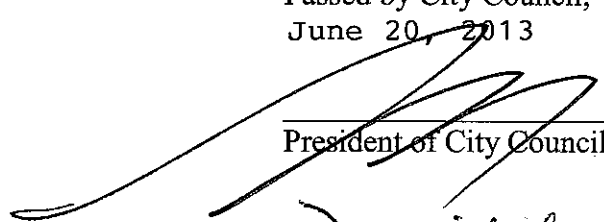
SECTION 1. The Access Channel and Support Agreement between the City and TelVue, a copy of which, in substantial form, is attached hereto as Exhibit "A," is hereby approved, and the Mayor, or his designee, and the City Clerk are hereby authorized and

directed to execute as many copies of said Agreement, as well as to undertake all additional actions related thereto, as may be necessary.

SECTION 2. This ordinance shall be deemed effective upon its date of passage by City Council and approval of the Mayor.

First Reading. June 6, 2013
Second Reading. . . . June 6, 2013
Third Reading. . . June 20, 2013

Passed by City Council,
June 20, 2013



President of City Council

ATTEST: 

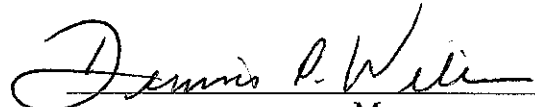
City Clerk

Approved as to form this
6 day of June, 2013



Senior Assistant City Solicitor

Approved this 25 day of June, 2013



Mayor

SYNOPSIS: This ordinance authorizes the City to enter into a two year contract with TelVue Corporation to organize, update, and maintain the content of WITN Channel 22, especially in regard to its message board, community announcements, public safety announcements, City Council, Council Members, City government services and programming aired on WITN. The contract will begin on July 1, 2013 and end on June 30, 2015. The annual cost to the City under the contract will be \$3,000.00, which shall be paid in monthly installments of \$250.00. The cumulative, two year cost to the City under the contract will be \$6,000.00.

ACCESS CHANNEL SERVICE AND SUPPORT AGREEMENT

This Access Channel Service and Support Agreement ("Agreement") is made and entered into as of the 1st day of July, 2013, by and between TelVue Corporation, a Delaware corporation with its principal place of business at 16000 Horizon Way, Suite 500, Mt. Laurel, NJ 08054 ("TelVue"), and The City of Wilmington, a DE municipality with its principal place of administration located at 800 French Street, Wilmington, DE 19801 ("Customer"). Agreement will expire June 30th, 2015.

WHEREAS,

- A. TelVue has developed a proprietary hardware and software solution (the "System", as further described herein) to assist municipalities, school districts and others in remotely organizing, updating and maintaining the content of their cable television access channel(s); and
- B. Customer desires to have TelVue supply the System and its TelVue Virtual Television Network Service (the System and TVTN Service collectively, the "Services"), and TelVue desires to supply the Services to Customer for its video channel as identified in Exhibit A.

NOW, THEREFORE, in consideration of the premises set forth above and the mutual covenants contained herein, and intending to be legally bound hereby, TelVue and Customer agree as follows:

1) Provision of Services.

- a) During the term hereof, Customer shall have a license to use the Services solely in connection with the designated access channel(s) ("License"). The Services will remain at all times the property of TelVue, and nothing herein shall be deemed to grant to Customer any right, title or interest in or to the Services, or any portion thereof, other than the License and detailed in Exhibit B.
- b) Customer may not give, sell, lease, assign copy, sublicense or otherwise transfer, in whole or in part, this Agreement, the License, the Services, other TelVue-provided materials, or any licenses or rights granted hereunder, except as approved by TelVue in writing.

2) Customer Obligations.

- a) Customer shall provide TelVue with access to Customer's technical personnel, facilities, systems, databases and information as necessary or appropriate for TelVue to perform its obligations under this Agreement.
- b) Customer shall appoint a Coordinator to act as liaison between Customer and TelVue. If there is equipment to be located at the Customer location, Customer shall provide and maintain a suitable installation site for such equipment, and shall provide all necessary electrical, cable and modem connections to such location(s). All equipment provided by TelVue as part of the Services shall remain the property of TelVue and shall be returned to TelVue at the expiration or termination of this Agreement. Except as otherwise expressly provided herein, Customer and its users shall have sole responsibility for acquiring and maintaining their own technology environment, including without limitation PC's, laptops, operating systems, servers, Internet access, local area networks and wide area networks (collectively, the "Customer Environment"). Customer hereby represents and warrants to TelVue that the Customer Environment will meet or exceed the minimum requirements for same set forth on Exhibit C hereto. Except as otherwise provided herein, Customer shall be responsible for making any necessary modifications to the Customer Environment, including without limitation all firewalls, proxy servers and other hardware and software, necessary to access or use the Services.
- c) The License granted hereunder is for the object code version of the Services and TelVue-Provided Content only. Customer has no rights to the source code for the Services or the TelVue-Provided Content. Customer shall not permit anyone under Customer's direction or control to, reverse engineer, disassemble, de-compile or remove any identifying mark of TelVue or its Licensors from the Services or the TelVue-Provided Content or attempt to do so. Customer may not modify, adapt, translate or create derivative works of the Services or the TelVue-Provided Content without TelVue's express written consent. The Services are licensed as a single product. TelVue-Provided Content may be used only in conjunction with the Services.
- d) Customer shall be solely responsible for all content supplied by Customer. Customer represents and warrants to TelVue that such content will not

violate or infringe any copyright, patent, trademark, trade secret, confidentiality or other proprietary right of any third part.

- e) Customer hereby represents and warrants to TelVue as follows: (i) Customer has the full power and authority to make, execute, deliver and perform this Agreement, and such execution, delivery and performance have been duly authorized by all necessary action on the part of Customer; (ii) the execution, delivery and performance of this Agreement by Customer does not contravene or conflict with, or constitute a breach of, any agreement to which Customer is a party.

3) Trademark and Customer Content License.

- a) Customer hereby grants TelVue a license to use and modify content supplied by Customer as necessary or appropriate in performing the Services hereunder and/or in marketing and advertising materials describing the Services.

4) Implementation, Value-Added and Additional Services.

- a) In connection with establishing connectivity to the Services, TelVue shall provide Customer the implementation, installation, training and other services set forth on Exhibit D hereto (collectively, the "Implementation Services") and on a monthly basis, services as set forth in Exhibit E (collectively, value-added services).
- b) From time-to-time during the term hereof, Customer may desire to have TelVue perform certain additional services ("Additional Services"). TelVue shall perform such Additional Services as agreed in writing by the parties subject to the terms and conditions hereof.

5) Support Services.

- a) During the term of this Agreement, TelVue will furnish Customer support services in connection with the Services (the "Support Services") in accordance with TelVue's then-current support policies and procedures. Any services requested by Customer and provided by TelVue outside the scope of the Support Services shall be billable on a time and materials basis at TelVue's then-current rates.

6) Fees; Payment.

- a) Customer shall pay TelVue the start-up charge ("Start-up Charge") and monthly service fee ("Service Fees") set forth on Exhibit F. TelVue may increase the fees for TelVue-Provided Content and Third Party Software to the extent that its Licensors raise their fees to TelVue upon no less than thirty (30) days' prior written notice to the Customer. If these increases exceed ten percent (10%) of the then current Service Fees, the Customer may choose to delete the TelVue-Provided Content or Third Party Software, as applicable.
- b) Except as otherwise expressly provided herein or in Exhibit F, Customer shall pay all Fees within thirty (30) days after the date of TelVue's invoice therefore. Service Fees are invoiced quarterly in advance. TelVue reserves the right to begin charging Customer Service Fees if the Service does not launch within one hundred twenty (120) days of the date hereof through no fault of TelVue.
- c) Any sum not paid by Customer when due shall bear interest until paid at a rate of one and one-half percent (1.5%) per month (eighteen percent (18%) per annum), or the maximum rate permitted by law, whichever is less. Customer shall be responsible for the costs, including without limitation, attorneys' fees and court costs, incurred by TelVue in connection with TelVue's collection of any past-due amounts under this Agreement. Customer shall bear and be solely responsible for the payment of all taxes levied or assessed in connection with the License, the Services and/or this Agreement, if any, including without limitation, all sales, use, rental receipt, personal property, import and value-added or other taxes (but excluding taxes based solely upon TelVue's income).
- d) In addition to any other remedy available to it, TelVue may suspend or terminate the Services, in whole or in part, upon Customer's failure to timely pay the Service Fees, without liability to Customer or others.

7) Term and Termination.

- a) The term of this Agreement shall be for two (2) years commencing on July 1st, 2013 (the "Initial Term") and expiring on June 30th, 2015
- b) Notwithstanding, this agreement may be terminated as follows:

- c)
 - i) By either party, in the event of a material breach hereof by the other party, which breach remains uncured thirty (30) days after written notice thereof is given to the breaching party; or
 - ii) By TelVue, in whole or in part, immediately if TelVue ceases providing the Services to its customers generally.

8) Proprietary Rights; Confidentiality.

- a) As between TelVue and Customer, TelVue and its Licensors shall own all right, title and interest (including without limitation all Proprietary Rights) in and to the Services and the TelVue-Provided Content and all components, reproductions, modifications or derivative works thereof, in whole or in part.
- b) Customer acknowledges and agrees that the Services shall constitute Confidential Information of TelVue for all purposes hereof. Confidential Information shall not include any information which (i) is or becomes available to the public other than as the consequence of a breach of any obligation of confidentiality; (ii) is actually known to or in the possession of Recipient without any limitation on use or disclosure prior to receipt from Disclosing Party' (iii) is rightfully received from a third party in possession of such information who is not under obligation to the Disclosing Party not to disclose the information; or (iv) is independently developed by Recipient without access to the Confidential Information.

9) Limited Warranty.

- a) TelVue will use commercially reasonable efforts to correct any error or defect in the Services (each, an "Error"), provided that Customer timely reports such Error to TelVue in writing and assists TelVue in documenting or replicating such Error. In the event that TelVue determines that any reported Error was not caused by the Services, but was the result of a cause within Customer's control, TelVue shall be entitled to reimbursement from Customer for time and materials expended by TelVue in identifying and rectifying such Error.
- b) TelVue does not warrant that operation of the Services shall be uninterrupted, error free or that TelVue will be able to correct all Errors. To the extent that data is being transmitted over the Internet hereunder, Customer acknowledges that TelVue has no control over the functioning of the Internet and TelVue makes no representations or warranties of any kind regarding the performance of the Internet. TelVue has no responsibility for the accuracy, appropriateness, continuity or availability of TelVue-Provided Content.

10) **Indemnification.**

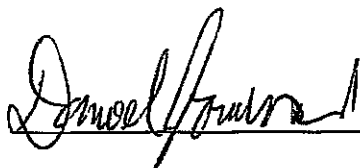
- a) TelVue shall defend, indemnify and hold Customer harmless from and against any and all claims (including any claim or action brought by Customer's cable television operator), liabilities, damages, demands, penalties and expenses (including, without limitation, court costs and attorneys' fees) arising out of or in connection with (a) access to and/or use of the Services by TelVue or the TelVue-Provided Content, including Sponsorships, (b) any claim that the Services or TelVue-Provided Content infringes on the Proprietary Rights of any Third Party, or (c) any breach by TelVue of any representation, warranty or covenant of TelVue hereunder. Customer shall, to the same extent, defend, indemnify, and hold TelVue harmless from any use of the Services by Customer.

11) **Miscellaneous.**

- a) This Agreement is made under and shall be governed by as construed in accordance with the laws of the State of Delaware.
- b) TelVue agrees to the City of Wilmington Terms and Conditions attached as Exhibit G.

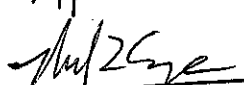
IN WITNESS WHEREOF, the parties hereto have, by their duly authorized representatives, executed this Agreement as of the date first above-written.

TELVUE CORPORATION ("TelVue"): The City of Wilmington, DE("Customer"):

By: 
Title: Director of Operations
Date: 6/17/2013

By: _____
Title: _____
Date: _____

Exhibit List:

Approved as to Form:
 6/17/13
S. Asst. City Solicitor

Access Channel Service and Support Agreement (Sponsorship)
by and between TelVue Corporation and the city of Wilmington
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- A. Channel
- B. Maintaining Existing Hardware and Software
- C. Maintaining Existing Minimum Requirements When Installed At Customer's Location
- D. Value-Added Services
- E. Fees
- F. City of Wilmington Terms and Conditions

- Channel Number: 22
- Access Type: Government
- Cable Operator: Comcast
- Exclusive or (shared with): Exclusive

Exhibit B

Hardware and Software

- TVTN provided video / audio switching hardware will be installed on the feed to the Cable System Operator for recognizing the switching between the TVTN Feed and alternate sources of video, so that Sponsor Acknowledgment verification can be performed.
- TVTN equipment capable of "playing to air" proprietary multi-media program screens, long form digital video, video clips, as well as video text messages originated from remote locations.
- Information Screens (screens that contain programming codes that will display a multi-media presentation that can contain: Photographic backgrounds, foreground photographic images, text, animations, voice-over narration, short digital video clips.)
- Design and production of video screen templates comprised of photographic background, logos and text. Some containing voice over announcements describing their contents.
- Remote access capability for updating video text message pages using TVTN's proprietary Internet based WEBUS^R system. Users can post text community announcements or trusted users can generate emergency announcements.
- Local emergency screens and related WEBUS^R connectivity.
- School emergency closing screens and related WEBUS^R connectivity.
- Weather screens that can be updated remotely from a weather service to be provided as part of the monthly support program.
- Local traffic conditions screen that can be updated from local traffic cameras (if the data is available in your area).
- Scans of photographs for production of templates and program wheel.
- Full motion video based station breaks and channel IDs.
- Audio library of screen setups and generic announcements.
- Firewall device for installation on High-Speed Internet access connection.

Exhibit C
Minimum Requirements When
Installed at Customer's Location

Site Preparation:

- Secure, adequate desktop or equipment rack space (minimum 4 RU), in an environmentally controlled space, to accommodate the TVTN Media Player within 100 feet of the Cable Operator supplied Channel Modulator.
- Uninterruptible AC power source to accommodate up to a quantity of 4, 115 volt-20 amp receptacles.
- Secure, standard 19" equipment rack space (minimum 5 RU), in an environmentally controlled space, to accommodate the Princeton Server Group Digital Broadcaster and Video Switcher within 100 feet of the Cable Operator supplied Channel Modulator for the Broadcast Server option.
- A Static IP address on the Internal Network and an Ethernet drop for local access to the Broadcast Server. Additional IP addresses and Ethernet drops may be required based on Digital Broadcast System options/add-ons.
- Uninterruptible AC power source to accommodate a minimum of 2, 115 volt-20 amp receptacles for the Broadcast Server option.
- An operational High-Speed Internet Access connection (minimum 768K down, 128K up or better), with an IP address, and open access to the Internet so that TelVue may install its Firewall/VPN equipment.
- Calibrated Video Signal for each channel(s) supplied from the serving Cable Operator's Channel Modulator.
- Customer extends a coax cable connection from the Channel Modulator, and a Category 5, 5e or 6 network connection from a High-Speed Access demarcation, each not to exceed 100 feet, and each to terminate where the TVTN supplied equipment will be located.
- Minimum of one WEBUS[®] capable desktop or laptop including a compatible web browser such as a modern version of Internet Explorer, FireFox, Safari.
- A site survey conducted by TVTN personnel or their agents may determine that more minimum requirements may be required, based on the customer's facility.

Implementation Phase:

- Access to and support from technically proficient individuals familiar with the Cable Operator Channel Modulator connectivity and the customer managed WAN and LAN connectivity during the Implementation Phase.
- Minimum of one customer-designated individual for the training and WEBUS^R testing.

Exhibit D
Value-Added Services

During the term of this agreement, TelVue will provide to the customer in consideration for the monthly support fee:

Monthly Services Include:

- Use of the TVTN Media Player.
- Maintenance and repair of all TVTN provided equipment and software at Installed location.
- Emergency equipment replacement or repair.
- Twenty-four hour, seven-days a week remote monitoring of TVTN equipment with the ability to diagnose hardware and software problems, repair them and reboot the player.
- Distribution and scheduling management of up to three hundred (300) total channel screens.
- Delivery of TVTN formatted information and programming from third party governmental and educational sources.
- Production of up to four (4) "highly produced" screens (Photos, video clips, headlines, animations, graphics and audio voiceover) for special events, from materials and copy provided by Customer, or Superuser status. TVTN superuser status allows a user to create their own High Production Screens.
- As needed Program Wheel Screen Position adjustments.
- Up to two (2) Video Conversion (:30 seconds per conversion).
- Weather forecasting licensing service to run on the weather screen.
- Real Time Traffic (if available).
- TVTN County, State & Federal Network (if available).
- PSA-Public Service Announcements.

Access Channel Service and Support Agreement (Sponsorship)
by and between TelVue Corporation and the city of Wilmington
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Exhibit E

Fees

Start-Up Charge: \$ 0

Monthly Service Fee: \$250

Billing Information

Address: _____

Attention: _____

Purchase Order or File #: _____

☐ Quarterly Billing or ☐ Annual Billing

Access Channel Service and Support Agreement (Sponsorship)
by and between TelVue Corporation and the city of Wilmington
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